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GËZIM KRASNIQI

## **The International Community's Modus Operandi in Postwar Bosnia and Herzegovina and in Kosovo: A Critical Assessment**

**Abstract.** This paper analyzes the involvement of the international community in the region of the former Yugoslavia, focusing on the cases of Bosnia and Herzegovina and Kosovo, and on its attempts to foster multiethnic democracies in these war-torn societies. It argues that the prevailing assumption among the international community that democratic and multicultural institutional frameworks would automatically give rise to liberal democracy in the former Yugoslavia, irrespective of the establishment of rule of law, has been harmed efforts to create well-functioning democracies and stable societies. Moreover, the paper argues that despite the mantra of "multiethnicity" propagated by the international administrations in Bosnia and Herzegovina as well as in Kosovo, ethnic segregation has been nourished by applying the principle of territoriality when conferring group-differentiated rights.

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### **Introduction**

From the outset, the international missions in Bosnia and Herzegovina (hereafter Bosnia) and Kosovo engaged in a rather difficult task of introducing multiculturalism and multiethnicity in these post-conflict societies.<sup>1</sup> Terms such as "coexistence", "united in diversity", "multiethnicity", "peace and tolerance", which were keywords in the international community's discourse on both post-war Bosnia and Kosovo, were thought to be the recipe for healing the wounds of war and to help overcome interethnic divisions and cleavages. By the same token, the newly adopted legal infrastructures, which were largely drafted by and adopted under the auspices of the international diplomats and international

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<sup>1</sup> The author would like to thank both the anonymous reviewer and Dr. Sabine Rutar for their constructive comments on the earlier versions of this paper.

missions involved in the region, affirm the principles of multiculturalism and multiethnicity. The animating principle behind such undertakings by international organizations was that of creating political entities based on the principles of inclusive citizenship and the affirmation of cultural diversity of the various ethno-cultural groups present in these two countries.

However, despite enormous efforts and financial contributions by various international institutions, both Bosnia and Kosovo still have a long way to go in order to become well-functioning democracies and societies that provide for equal representation in the process of political decision-making and that respect the human rights of all individuals irrespective of their ethnic, religious or social backgrounds. This peculiar development and situation represents just the surface of two more complex and profound normative and practical issues: (1) the preconditions for the introduction of liberal pluralism or multiculturalism in a given society, and (2) the capacities of international institutions in general, and European ones in particular, in formulating and implementing the proper policies with regard to multiculturalism.

This paper aims to critically examine the involvement of the international community in the region of the former Yugoslavia, with an emphasis on the cases of Bosnia and Kosovo, and especially focuses on the manner in which multiculturalism has been used as a tool to rebuild war-torn and divided societies. The paper argues that the main reasons behind the failure of the international community's effort to create multicultural and multiethnic societies in the region of the former Yugoslavia are the following: (1) its attempts to introduce democracy and multiculturalism prior to, or, in the best case, simultaneous with the establishment of rule of law; (2) its imposition of rules with little or no consideration of the local elites, thus turning the international community's missions into something akin to "neo-colonial"<sup>2</sup> rule; and (3) its treatment of the local population not as agents of change and active members of society, but rather as traumatized war victims.

Rather than analyzing the international presence in these territories one by one, this paper focuses on general developments,<sup>3</sup> thus attempting to draw general conclusions from the involvement of international actors in territories emerging from bloody conflicts. In the first section, the paper discusses the concept of liberal pluralism and the challenges of democratizing ethnically diverse societies. Thereafter, it focuses on the specific developments in Yugoslavia in the early 1990s and on the various attempts to manage and/or eliminate ethnic

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<sup>2</sup> This term, as used in this paper, refers to a specific form of inherent political dependency on, as well as control by, international political institutions of the Bosnian and Kosovar societies.

<sup>3</sup> In the case of Kosovo, this paper focuses only on the developments prior to the Kosovar declaration of independence on 17 February 2008.

diversity. The third and fourth sections analyze external involvement in the region, with a particular focus on the successes and failures of the international missions in Bosnia and Kosovo.

### **Liberal Pluralism in Multiethnic and Multicultural Societies**

In many parts of the world, the long aftermath of the Second World War was characterized by a consolidation of the democratic state based on the liberal idea of individual rights. Thus, the predominant tendency of postwar liberals was, as Inis Lothair Claude put it,

“to subsume the problem of national minorities under the broader problem of ensuring basic individual rights to everyone, without reference to membership in ethnic groups”.<sup>4</sup>

As a result, in many parts of the world the relationship between the state and its ethnic minorities was constantly neglected and the latter actually remained, by virtue of their number, unequal and consistently overruled under this assumed principle of ethno-cultural neutrality.<sup>5</sup> The increasing discontent of ethnic minorities with the classical model of democracy which, according to them, represents a “process of majoritarian decision-making”<sup>6</sup> raises the normative and philosophical question about the limits of realizing collective claims through individual rights. Instead, it is necessary to, in the words of James Kellas, “make democracy compatible with a culturally ‘plural society’”, as an “alternative to the classic aim of nationalism [...] to form a [homogeneous] ‘nation-state’”;<sup>7</sup> that is, to represent and recognize minority interests and rights from a genuinely communitarian perspective. Accordingly, communitarianism and multiculturalism are two major approaches to group-sensitive citizenship rights.

The communitarian perspective emphasizes the limits to the realization of group claims through individual rights, and therefore rejects the liberal approach of considering cultural differences and group particularities as something “private”. As Vernon Van Dyke argues, in a world of heterogeneous populations in almost every state, it is necessary to think of ethnic and other communities as

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<sup>4</sup> Inis Lothair CLAUDE, *National Minorities: An International Problem*. Cambridge/Mass. 1955, 211.

<sup>5</sup> According to Will Kymlicka, the idea of ethnocultural neutrality is a myth. Will KYMLICKA, *Western Political Theory and Ethnic Relations in Eastern Europe*, in: IDEM / Magda OPALSKI (eds.), *Can Liberal Pluralism Be Exported? Western Political Theory and Eastern Relations in Eastern Europe*. Oxford 2001, 13-106, 16. Cf. also Michael WALZER, *The Politics of Difference: Statehood and Toleration in a Multicultural World*, *Ratio Juris* 10 (1997), n. 2, 165-176.

<sup>6</sup> Will KYMLICKA, *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford 1995, 5.

<sup>7</sup> James G. KELLAS, *The Politics of Nationalism and Ethnicity*. London 1991, 77.

"right-and-duty-bearing units".<sup>8</sup> The idea is that individuals may enjoy their rights best as members of such groups. Other communitarianists, such as Charles Taylor and Michael Walzer, have also argued for the necessity of recognizing different group identities<sup>9</sup> and of providing vulnerable groups "with a voice, a place and a politics of their own".<sup>10</sup> By contrast, Will Kymlicka, defending the ideal of liberal multiculturalism, argues for the legitimacy and necessity of supplementing traditional human rights with minority rights. He does so through a theory of justice that takes into consideration the multicultural nature of states and includes both universal human rights and certain group-differentiated rights.<sup>11</sup> This paper, on the other hand, is not so much concerned with the concept of liberal multiculturalism per se, but rather with the conditions and sequencing of this idea. In other words, the aim of this paper is to take a look at the conditions necessary for the successful application of the ideal of liberal multiculturalism and its institutional mechanisms. Kymlicka has emphasized that multiculturalism is much easier to adopt in societies or states which have a long tradition of rule of law and the protection of human rights and well-established liberal-democratic institutions.<sup>12</sup> If this is true, does one have to go one step further and argue that the ideal of liberal multiculturalism might even be impossible to achieve in societies that have not experienced liberal democracy and that do not have a tradition of rule of law and human rights protections?

### **The Dissolution of Yugoslavia and the Introduction of Ethnic Democracy**

The many commentators and scholars who predicted that liberal democracy would seamlessly succeed communism in post-1989 Southeast Europe were proven wrong by the developments in Yugoslavia. According to Ivan Vejvoda,

"the annus mirabilis, 1989, during which many hoped to see the stone of democracy appear underneath the rapidly crumbling stucco façade of communist rule, proved to be an overwhelming but short lived euphoria".<sup>13</sup>

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<sup>8</sup> Vernon VAN DYKE, *The Individual, the State, and Ethnic Communities in Political Theory*, in: Will KYMLICKA (ed.), *The Rights of Minority Cultures*. Oxford 1995, 31-56, 31.

<sup>9</sup> "Due recognition is not just a courtesy we owe people. It is a vital human need." Charles TAYLOR, *The Politics of Recognition*, in: Amy GUTMAN (ed.), *Multiculturalism and "The Politics of Recognition"*. Princeton/NJ 1992, 25-74, 25.

<sup>10</sup> WALZER, *The Politics of Difference* (above fn. 4), 165-176.

<sup>11</sup> KYMLICKA, *Multicultural Citizenship* (above fn. 5), 6.

<sup>12</sup> IDEM, *Multicultural Odysseys: Navigating the New International Politics of Diversity*. Oxford 2007, 8.

<sup>13</sup> Ivan VEJVODA, *The Exit from Totalitarianism in East Central Europe, Transition and Consolidation in Central and Eastern Europe 2* (1995), 37-52, 37.

Instead of an easy path towards democracy, the region embarked on a long trajectory characterized by wars, political authoritarianism and, finally, transition to democracy. What the world witnessed in Yugoslavia in the 1990s was not a genuine attempt to introduce democracy (despite the liberal democratic rhetoric of most political leaders), but rather an attempt to create nation-states based on the principles of ethnicity and an exclusive, majoritarian model of democracy.

In general, the main factors that prevented these countries from introducing and consolidating democratic societies and states were: (1) the resurgence of nationalism, (2) the lack of democratic and civic traditions, and (3) the "politicization of ethnicity"<sup>14</sup> in an ethno-culturally diverse environment. Undoubtedly, all these factors are interconnected with one another. First, in most of the former Yugoslav republics, and in Southeast Europe in general, new political elites emerged that used nationalism and identity politics to gain political legitimacy and power. Thus, the emerging ethnic nationalists considered national majority groups (or the "core nation") as the "only permissible 'state-forming' entity which must predominate demographically, and its control of the state must be enshrined in the constitution".<sup>15</sup> Consequently, a sociopolitical form emerged that Robert Hayden has described as "constitutional nationalism",<sup>16</sup> which seriously impaired majority-minority relations. The entire region lacked democratic traditions, as republican democracy and inclusive citizenship were indeed largely foreign concepts. According to Michael Ignatieff,

"thanks to the communist take-over of Eastern Europe, some societies – such as Yugoslavia – effectively passed from Austro-Hungarian rule, through monarchical dictatorship in the inter-war period, to Stalinist autocracy, without gaining any historical experience of republican democracy".<sup>17</sup>

This proved fatal for future developments in the region. For the elites of post-communist Yugoslavia, democracy meant ethnic majority rule and thus republican democracy and multiethnic cooperation proved incompatible.<sup>18</sup> Democracy was reduced to a zero-sum game rather than a political concept that involves negotiations and compromises. Weak and unstable institutions and, above all, the lack of a strong civil society, played important roles as well. As Erika Harris puts it:

<sup>14</sup> Joseph ROTHSCHILD, *Ethnopolitics: A Conceptual Framework*. New York 1981.

<sup>15</sup> Janusz BUGAJSKI, *Political Parties of Eastern Europe: A Guide to Politics in the Post-Communist Era*. London, New York 2002, xxxiv-xxxv.

<sup>16</sup> Robert M. HAYDEN, *Constitutional Nationalism in the Formerly Yugoslav Republics*, *Slavic Review* 51 (1992), n. 4, 654-673.

<sup>17</sup> Michael IGNATIEFF, *Republicanism, Ethnicity and Nationalism*, in: Catriona MCKINNON / Iain HAMPSHER-MONK (eds.), *The Demands of Citizenship*. New York, London 2000, 257-266, 258.

<sup>18</sup> *Ibid.*, 259.

"Nationalism is the logical concomitant of transition to democracy in post-communist societies, not because democracy has to go hand-in-hand with nationalism, but because the weakness of these states and their democratic institutions allows nationalism to take up a position of the great unifier, mobiliser and legitimiser in all tasks that a newly independent democracy needs to perform."<sup>19</sup>

Quite logically, the considerable ethno-cultural diversity of the region impaired democratic consolidation. Ethno-cultural diversity is not a source of instability per se. Instead, it is the politicization of ethnicity – which translates the personal quests of individuals for meaning and belonging into group demands for respect and power<sup>20</sup> – that becomes a source of instability and conflict. In former Yugoslavia, institutions that protected ethnic diversity were undermined by a combination of the prevalence of nationalist elites that desired homogenous nation-states and the lack of democratic traditions of negotiation and moderation. Therefore, the ideal of constructing homogenous nation-states out of an ethnically diverse reality produced disastrous results, ranging from "ethnic unmixing"<sup>21</sup> to "ethnic cleansing". The process of state consolidation was, at best, characterized by the empowerment of the core nation and the disempowerment of ethnic minorities. Instead of moderation in claims and in responses, negotiations, and cooperation, which are a *conditio sine qua non* for diversity management in a democratic society,<sup>22</sup> ethnicity became the basis of democracy in former Yugoslavia.

In general, the tension between democratic consolidation and ethnic diversity is particularly salient in the context of transitional societies characterized by deep ethno-cultural diversity, where democracy has never had a strong foothold and the new political elite cannot rely on sound traditions of democratic reasoning or institution-building.<sup>23</sup> Certainly this was the case in Yugoslavia. Because of the prevalence of nationalism and the ethnic principle, most of the successor states of Yugoslavia adopted what Sammy Smooha describes as a system of ethnic democracy, and hence a "diminished type of democracy", lacking a number of core democratic features.<sup>24</sup> These tensions stemming from political

<sup>19</sup> Erika HARRIS, *Nationalism and Democratisation: Politics of Slovakia and Slovenia*. Aldershot et al. 2002, 8f.

<sup>20</sup> ROTHSCHILD, *Ethnopolitics* (above fn. 13), 6.

<sup>21</sup> ROGERS BRUBAKER, *Nationalism Reframed: Nationhood and the National Question in the New Europe*. Cambridge 1996, 166.

<sup>22</sup> MONICA ROBOTIN, *A Comparative Approach to Minority Participation in Government*, in: IDEM / LEVENTE SALAT (eds.), *A New Balance: Democracy and Minorities in Post-Communist Europe*. Budapest 2003, 153-169, 166.

<sup>23</sup> LEVENTE SALAT, *Southeast European Challenges to Representative Democracy*, in: ROBOTIN / SALAT (eds.), *A New Balance* (above fn. 21), 3-30, 15.

<sup>24</sup> SAMMY SMOOHA, *The Model of Ethnic Democracy*, in: IDEM / PRIIT JÄRVE (eds.), *The Fate of Ethnic Democracy in Post-Communist Europe*. Budapest 2005, 5-59, 21f.



disputes led to open warfare in the cases of Bosnia, Croatia and then Kosovo, thus triggering external intervention.

### International Involvement in Yugoslavia

In the early 1990s, after the Yugoslav crisis erupted, many international actors, such as the United Nations (UN), the European Community (EC), and the Conference for Security and Cooperation in Europe (CSCE) became directly involved in the events. The Yugoslav crisis evolved in a period characterized by the global diffusion of both a political discourse on multiculturalism and its codification into different international legal norms, mostly embodied in international declarations and conventions addressing minority rights.<sup>25</sup> Indeed, in this period concerns and efforts to develop minority rights standards and to institutionalize ethno-cultural diversity proliferated, culminating in the adoption of several pieces of minority rights legislation on the regional as well as the global levels. Certainly, some of these norms and documents were motivated by the conflicts in Yugoslavia. In the context of minority rights diffusion, the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union,<sup>26</sup> adopted by the EC on 17 December 1991, were of crucial significance, for they introduced the principle of political conditionality. This concept asserts that breakaway republics would gain international recognition contingent upon the condition that the new entities (1) constitute themselves on a democratic basis and, (2) fulfill the requirement to provide guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE, known as the Charter of Paris for a New Europe.

In the first phase of its involvement in the Yugoslav conflict, through the Conference on Yugoslavia from 1991 to 1992, the international community aimed at playing the role of a neutral arbiter in the process of the country's dissolution. According to Geert-Hinrich Ahrens, a senior European diplomat present in Yugoslavia at that time, at the beginning "the international community was slow to react to the Yugoslav crisis and had no agreed strategy how to deal with it".<sup>27</sup> Thus, its approach was mostly reactive. With regard to ethnic minority issues, various international mediators in Yugoslavia aimed to achieve two objectives: (1) to keep minimize the size of minority groups, thus reducing the size of the

<sup>25</sup> KYMLICKA, *Multicultural Odysseys* (above fn. 11), 3f.

<sup>26</sup> Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the Council of the European Community, 17 December 1991, reprinted in *Europe* 5632 n. s., 18 December 1991.

<sup>27</sup> Geert-Hinrich AHRENS, *Diplomacy on the Edge: Containment of Ethnic Conflict and the Minorities Working Group of the Conference on Yugoslavia*. Washington/D.C., Baltimore/MD 2007, 38.



problem,<sup>28</sup> and (2) to protect the remaining minorities by formulating strict rules and by imposing the concept of multiculturalism.<sup>29</sup> Nonetheless, it was *uti possidetis juris* – a principle in international law referring to states gaining their sovereignty from a colonial power, and affirming the administrative borders that existed prior to independence – that won out over the ethnic principle in the process of the dissolution of socialist Yugoslavia. Application of this principle in the case of Yugoslavia meant that the newly sovereign states' borders should correspond to the former borders of the Republic. The EC set strict criteria for minority rights as a condition for recognition. However, in many cases political interests prevailed instead. In other words, the international community lacked a blueprint and the political will to stick to the previously set standards. Instead, it frequently ended up merely reacting to the developments on the ground and often applied double standards.

For example, Germany, the largest EC country, recognized Croatia on 23 December 1991, some three weeks before the Badinter Commission<sup>30</sup> would issue its report, in which it assessed, among other things, that Croatia did not fulfill the necessary criteria, and especially not the stipulations related to minority rights. On the other hand, although the Commission found that Macedonia did fulfill the criteria, as a consequence of Greece's (which accused Macedonia of having territorial pretensions toward Greece) persistent objections, EC/EU member states did not extend recognition to Macedonia until December 1993. Similarly, the international mediators negotiated the possible modalities for the accommodation of the Serb minorities in Croatia and Bosnia, while refusing to do the same in the case of the Albanians in Kosovo and Macedonia. And it was precisely because of its failure to negotiate acceptable solutions in Yugoslavia in time that the international community had to intervene militarily, first in Bosnia and later in Kosovo, and to impose its own political models on these territories.

### **The International Missions in Bosnia and Kosovo**

The initial response of the international organizations, particularly the UN, during the violent conflicts in Bosnia and later in Kosovo, was to use diplomacy in an attempt to halt the war. David Chandler notes that "the UN was heavily criticized in the late 1990s for failing to safeguard human rights due

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<sup>28</sup> Ethnic minorities were seen as the main problem in the conflict.

<sup>29</sup> AHRENS, *Diplomacy on the Edge* (above fn. 26), 90.

<sup>30</sup> The European Communities Conference on Yugoslavia (ECCY), which convened on 7 September 1991 under the chairmanship of Lord Peter Carrington and Cyrus Vance, included an Arbitration Commission, which arbitrated on "differences" submitted by the conflicting parties.

to its prioritization of finding a negotiated peace".<sup>31</sup> As a result, during the last phase of the war in Bosnia, and especially during the war in Kosovo, the conflicts were assessed from the perspective of human rights abuses, with one side being seen as the victim and the other as the perpetrator. Thus, for many scholars and human rights activists, NATO's intervention in Kosovo "marked the beginning of a new age of human rights enforcement".<sup>32</sup> Indeed, after the military interventions by NATO in Bosnia (1995) and Kosovo (1999), the UN established its largest peace-building<sup>33</sup> missions ever. This meant that the UN missions for the first time would have the mandate and the power to shape the political sphere and society in these territories. Notwithstanding the differences in the nature of the conflicts in Bosnia and Kosovo, the tools brought to bear by the international community in reconstructing these societies were essentially the same and involved the installment of international officials with executive authority over these territories, whose decisions had the force of law.<sup>34</sup>

With regard to the way the international missions in Bosnia and Kosovo were designed and implemented, two main concerns arise. First, these societies were regulated based on exogenous rules and without proper political input from local polities; in the words of Chandler, in these countries "the political sphere has been colonized by external regulation".<sup>35</sup> Second, even after the settlement of the conflict the local populations were primarily seen as victims rather than potential agents of post-war political and social change. Both aspects proved to be of crucial importance when it came to determining the fate of democracy and liberal pluralism in these countries. Instead of assisting and empowering local leaders to take responsibility over their political sphere, international officials preferred to rule over them. By the same token, instead of mobilizing the local populations to participate in public debates and discussions about politics and issues of major concern to them, the international administrators continued to view them mainly as war victims and as people who could not be entrusted with any active role in politics (apart from elections) and the public sphere. This kind of demobilization and depoliticization of the local population was especially

<sup>31</sup> David CHANDLER, *From Kosovo to Kabul: Human Rights and International Intervention*. London 2002, 174.

<sup>32</sup> *Ibid.*, 15.

<sup>33</sup> According to the Brahimi Report (2000), peace-building includes, but is not limited to: reintegrating former combatants into civilian society; strengthening the rule of law; improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development; and promoting conflict resolution and reconciliation techniques. For more see the Report of the Panel on United Nations Peace Operations (A/55/305 – S/2000/809), 21 August 2000, available at <[http://www.un.org/peace/reports/peace\\_operations/](http://www.un.org/peace/reports/peace_operations/)>. All websites were last accessed on 11 January 2011.

<sup>34</sup> Matthew PARISH, *Paradigms of State-Building: Comparing Bosnia and Kosovo*, *Journal of Eurasian Law* 3 (2010), n. 3, 1, available at <<http://ssrn.com/abstract=1680226>>.

<sup>35</sup> CHANDLER, *From Kosovo to Kabul* (above fn. 30), 203.

prevalent in the case of Kosovo and began with NATO's intervention. According to Slavoj Žižek, this stems from the fact that international interventions are justified exclusively in the depoliticized language of human rights:

"In this context, men and women are no longer political subjects, but helpless victims, robbed of all political identity and reduced to their naked suffering [...]. The ideology of victimization is the real problem: it's perfectly fine to help the helpless Albanians against the Serbian monsters, but under no circumstances must they be permitted to throw off this helplessness, to get a hold on themselves as a sovereign and independent political subject – a subject that doesn't need the kindly shelter of NATO's 'protectorate'. No, they have to stay victims. The strategy of NATO is thus perverse in the precise Freudian sense of the word: The other will stay protected so long as it remains the victim."<sup>36</sup>

Neither the international intervention in Bosnia nor that in Kosovo has been planned carefully in terms of long-term political goals. A long-term strategic plan was lacking, as were ideas regarding the long-term future of both territories. According to Matthew Parish, in the case of Bosnia, the intervening foreign powers' short-term goal was to bring political stability to the region, whereas in the case of Kosovo the idea was "to bring some immediate stability to the province while leaving the issue of Kosovo's final status to some undetermined future time".<sup>37</sup> This lack of long-term political goals proved fatal for Bosnia's and Kosovo's prospects for democracy and the rule of law. In the case of the former, the international military presence and the insistence (in particular by the U.S. government) on organizing early elections (despite the fact that the elected officials would still be controlled and ruled by international administrators) did not keep the conflicting parties from harassing and expelling the remaining minorities, from impeding the return of refugees and internally displaced persons, and from misusing the voter registration process to increase the ethnic homogeneity of both the polity and its government.<sup>38</sup> Thus the nationalist forces that succeeded in the 1996 elections managed to cement the postwar ethnic division of Bosnia and Herzegovina that remains intact to this day. As Susan Woodward argues, "Bosnia was therefore becoming less multiethnic after Dayton, not more".<sup>39</sup> This suggests that the main concern of the external actors in Bosnia was not security and the rule of law, but the rush to establish democratic and liberal institutions, which in return were utilized by nationalist parties to create ethnically pure local and regional entities. Thus, it

<sup>36</sup> Slavoj Žižek, NATO, the Left Hand of God, *Nettime*, 29 June 1999, available at <<http://www.egs.edu/faculty/slavoj-zizek/articles/nato-the-left-hand-of-god/>>.

<sup>37</sup> PARISH, *Paradigms of State-Building* (above fn. 33), 8.

<sup>38</sup> Susan L. WOODWARD, Bosnia and Herzegovina: How Not to End a Civil War, in: Barbara P. WALTER / Jack SNYDER (eds.), *Civil Wars, Insecurity and Intervention*. New York 1999, 73-115, 102.

<sup>39</sup> *Ibid.*, 96.

can be argued that the attempt to introduce democracy before the establishment of the rule of law led to the emergence of "ethnic democracy".

The same mistakes were repeated in Kosovo. Despite the fact that UN Security Council Resolution 1244 vested all legislative and executive powers, including the administration of the judiciary, in the hands of the Special Representative of the Secretary General (SRSG), and despite NATO's strong military presence (up to 50,000 soldiers) on the ground, Kosovo found itself without a government once the Serb military and civil servants left Kosovo in June 1999. The power vacuum and the relative lawlessness that prevailed in Kosovo for several months after June 1999 enabled Albanian radical groups and individuals to harass the Kosovo Serb population and force about half of it to leave the territory. In addition to NATO's failed attempt to provide a stable and secure environment for all the ethnic groups in Kosovo, UNMIK also failed to create a unified political structure governing the entire territory, as Serbian-sponsored "parallel structures" were allowed to operate in Serb-inhabited areas of Kosovo.

Without the rule of law, both democracy as such and elections as one of its crucial tools are reduced to formal procedures, and all too often are abused by political entrepreneurs connected to radical and even criminal groups. It is obvious that the international missions in Bosnia and Kosovo largely failed to enforce the rule of law in the aftermath of the wars. The performance of the international military and civilian presence in these countries often resembled that of a force deployed to oversee an interim ceasefire between the conflicting parties rather than that of an administrative and security mission. In both cases, priority was accorded to elections (despite the fact that the highest international representative still would have the final say), rather than to the enforcement of the rule of law. In the case of the international administrations in Bosnia and Kosovo the belief that all the lawlessness of the war and the postwar period would wither away once elections were organized seems to have prevailed. Certainly, this did not happen in either case. The missions in Bosnia and Kosovo, according to Simon Chesterman, suffered "from the failure to assert military and policing authority in the early stages of the operations".<sup>40</sup> Consequently, in a context where neither international institutions nor local ones could provide security, fairness and justice, elections and the multicultural constitutional design were in many respects stripped of their initial meaning and did not produce very positive results.

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<sup>40</sup> Simon CHESTERMAN, *You, The People. The United Nations, Transitional Administration, and State-Building*, Oxford 2004, 112-113.

## From Human Rights Protectors to "Neo-colonial" Rulers

The international interventions in Bosnia and Kosovo were initiated, in the first instance, in the name of human rights. However, due to the way in which these missions were carried out, they came to be considered as "neo-colonial" presences and administrations. Ignatieff, for example, considers Bosnia, Kosovo, and Afghanistan as

"laboratories in which a new imperium is taking shape, in which American military power, European money and humanitarian motive have combined to produce a form of imperial rule for a post-imperial age".<sup>41</sup>

This becomes visible especially if one analyzes the relationship between local and international officials. In a situation where the locals' job was limited to translating, cleaning and driving while the internationals did the grand imperial planning, this relationship cannot be considered other than inherently "colonial".<sup>42</sup> Obviously, such a relationship and situation is detrimental to democratic consolidation, which was one of the principal aims proclaimed for these missions. Lack of local involvement in the postwar governance and decision-making process, as well as the lack of accountability among the international administrators in Bosnia and Kosovo certainly did not contribute to the democratization of politics or culture in these societies.

Adam Przeworski argues that "[t]he first decisive step toward democracy is the devolution of power from a group of people to a set of rules".<sup>43</sup> Unfortunately, this did not happen in the case of the international missions in Bosnia and Kosovo, as the Office of the High Representative (OHR) in Bosnia (expanded in 1997 by the "Bonn Powers") and the Special Representative of the Secretary General (SRSG) in Kosovo had the final say in all political matters, from vetoing laws to dismissing elected politicians. Chandler is correct to argue that in international protectorates there exists a high degree of external regulation but little democracy.<sup>44</sup> Despite internal and external criticism, the OHR had its authority extended over several years. Reflecting on the negative impact of such continuous external intervention in Bosnia, as well as on the lack of transparency and accountability, Florian Bieber emphasizes two different negative effects of the OHR's decisions: (1) the disempowerment of the voters and local elites through the dismissal from office of elected officials, and (2) the de-motivation of local

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<sup>41</sup> Michael IGNATIEFF, *Empire Lite. Nation-building in Bosnia, Kosovo and Afghanistan*. London 2003, 20.

<sup>42</sup> *Ibid.*, 95.

<sup>43</sup> Cited in Ray TARAS, *Executive Leadership: Presidents and Governments*, in: Stephen WHITE / Judy BATT / Paul G. LEWIS (eds.), *Developments in Central and East European Politics*, vol. 3. Basingstoke u. a. 2003, 115-132, 125.

<sup>44</sup> CHANDLER, *From Kosovo to Kabul* (above fn. 30), 203.

officials to make any effort to negotiate compromises.<sup>45</sup> According to Chandler, the externally driven democratization process in Bosnia,

“instead of strengthening the central institutions of the new state, and facilitating compromise and negotiation, [...] has removed policy-making capacity from both the state and the entities”.<sup>46</sup>

Thence, the external powers, which were supposed to be temporary, have, in reality, made the Bosnian political system fully dependent upon them. Instead of deriving policies from local concerns and needs, the legislative process in Bosnia has been driven by technical and administrative experts in Brussels and Washington and imposed through the international Office of the High Representative.<sup>47</sup> Undoubtedly, this did not promote the inclusion of local stakeholders in politics and decision-making processes.

A similar situation occurred in Kosovo regarding the competences of the SRSG.<sup>48</sup> When, after almost two years of complete international control over all aspects of Kosovar society, the new SRSG Michael Steiner urged some devolution of power to local authorities, UN officials who had been working in the municipalities since the start of the mission found it hard to adopt the new approach simply because they had become accustomed to their “neo-colonial” roles.<sup>49</sup> Therefore, though various UN officials repeatedly upheld the mantra of “building local capacities”, they granted the locals voting rights, but no rights to self-rule.<sup>50</sup> The UN Mission in Kosovo took over extremely challenging tasks, including the duty to provide basic civil services, to reconstruct the infrastructure, to build and run a judicial system, and to collect taxes, despite the fact that the UN in general had no experience in these fields and very few people who did possess the expertise had to perform a wide array of functions.<sup>51</sup> In other words, the UN assumed duties it was unable to fulfill. The international actors in Kosovo held sufficient power, yet they achieved little, mostly due to

<sup>45</sup> Florian BIEBER, *Post-War Bosnia: Ethnicity, Inequality and Public Sector Governance*. London 2006, 145f.

<sup>46</sup> David CHANDLER, *Bosnia: Faking Democracy after Dayton*. London 2000, 194.

<sup>47</sup> IDEM, *The State-building Dilemma: Good Governance or Democratic Government?*, in: Aidan HEHIR / Neil ROBINSON (eds.), *State-Building. Theory and Practice*. London 2007, 70-88, 81-82.

<sup>48</sup> The case of political empowerment was more complicated in Kosovo than in Bosnia, as here UN Resolution 1244, the legal foundation for the international presence in Kosovo, did not determine the territory's political status. As Ignatieff puts it, “the problem is that 1244, the UN resolution he [the SRSG] has been sent here to enforce, is political science fiction. It reaffirms the sovereignty of Yugoslavia over Kosovo, and it also calls for the Kosovars to enjoy ‘substantial autonomy and self-government’”. IGNATIEFF, *Empire Lite* (above fn. 38), 68.

<sup>49</sup> Iain KING / Whit MASON, *Peace at Any Price: How the World Failed Kosovo*. London 2006, 167.

<sup>50</sup> IGNATIEFF, *Empire Lite* (above fn. 38), 133.

<sup>51</sup> William G. O'NEILL, *Kosovo: An Unfinished Peace*. London 2002, 38.

their failure to understand the local context and their mission properly. Jens Narten argues that, with regard to the development of local capacities and the long-term promotion of a civic culture of tolerance and democratic values in postwar Kosovo,

“external statebuilders were often restricted in their project planning due to a lack of necessary long-term orientation, all of which contributed to the prolongation of Kosovo’s dependency on external statebuilding assistance”.<sup>52</sup>

The failure of the international administration to transform Kosovo into a multiethnic society subject to the rule of law, according to Mason and King, “resulted from a misunderstanding and misappropriation of power”.<sup>53</sup> In short, the results did not match the investment.

In this way, the international missions in Bosnia and Kosovo failed to meet the two key challenges of transition, namely, the establishment of a public sphere and its democratic control by the local people.<sup>54</sup> Both the extended external political control and the patronizing attitude of international officials have prevented the emergence of viable local institutions. In the cases of Bosnia and Kosovo, international state-builders saw little need either to account for their policies with the local population, or to set clear strategic aims and a time scale for their withdrawal.<sup>55</sup> Both missions were designed in a way as to avoid any kind of political responsibility and accountability for the international actors.<sup>56</sup> The continuous extension of external control in both cases challenged the concept of popular sovereignty and left little room for local institutions to participate in policy-making. Even in those cases where international administrators did cooperate with local people, it was the national leaders rather than civil society agents or locally oriented groups who were involved. This top-down approach, which usually meant that the international administrators imposed their decisions on the local leaders, instituted a clear hierarchy of power with the international officials at the top, the local leaders in the middle, and the people at the bottom. In a situation when the public sphere was limited to international bureaucrats and their subordinated local leaders, the people, or the “demos”,

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<sup>52</sup> Jens NARTEN, Dilemmas of Promoting “Local Ownership”: The Case of Postwar Kosovo, in: Roland PARIS / Timothy D. SISK (eds.), *The Dilemmas of Statebuilding. Confronting the Contradictions of Postwar Peace Operations*. London 2009, 252-282, 267.

<sup>53</sup> KING / MASON, *Peace at Any Price* (above fn. 45), 24.

<sup>54</sup> Mary KALDOR / Ivan VEJVODA, Democratization in East and Central European Countries, *International Affairs* 73 (1997), n. 1, 59-83, 73.

<sup>55</sup> CHANDLER, *Bosnia* (above fn. 43), 205.

<sup>56</sup> Chandler argues that Bosnia is the clearest case of a state built in the process of separating power from political responsibility. Cases such as Bosnia where international actors exercise full power and control while refusing to take any kind of responsibility exemplify the rise of a new empire, an “empire in denial”. David CHANDLER, *Empire in Denial: The Politics of State-building*. London 2006, 1-47.



were viewed merely as “passive bystanders”. Therefore, the establishment of a centralized decision-making in Bosnia and Kosovo changed the latter into “territories under benevolent autocracies”.<sup>57</sup>

Certainly, this kind of approach that, de facto, ignores the political organization of a polity as the source of sovereignty is bound to relinquish the creation of stable foundations for the emergence of democracy. The concentration of decision-making power in the hands of a single person or a small group of people, as well as the lack of accountability, set bad examples for both Bosnia and Kosovo, and heavily impaired both states’ aspirations to become fully functional democracies.

### Providing “Therapeutic Governance”

Instead of civic empowerment and political activism, the people in Bosnia and Kosovo were offered what Caroline Hughes and Vanessa Pupovac call “therapeutic governance”,<sup>58</sup> implemented through training and disciplining programs. The basic premise of this therapeutic paradigm is that war-affected populations are believed to be suffering from mass trauma and are (desperately) in need of mass therapeutic intervention. Local actors are thus pathologized and blamed for all the failures in the region. Hughes and Pupovac see this criticism of the local populations’ failure to assume responsibility as “typical of the disavowal of external regulation within a discourse of intervention mystified in the language of emancipation”.<sup>59</sup> Unfortunately, this paradigm was applied to both Bosnia and Kosovo. According to the two scholars, the therapeutic paradigm became a panacea even for the faulty economic policies implemented by the international actors:

“Yet analysis suggests that international neoliberal economic policies imposed in Bosnia, requiring the retreat of the state, have failed to regenerate the Bosnian economy to pre-war levels. Furthermore these policies have eroded the state’s capacity to generate income through taxation and to regulate the informal economy, in turn eroding its capacity to enforce the rule of law and finance welfare provision, thereby exacerbating social inequalities. Thus the therapeutic paradigm becomes a cure-all and an apology for the inability of international actors to realise their blueprints for these countries.”<sup>60</sup>

In terms of the democratization process this approach carries many risks, for it a priori excludes the people from the public sphere and inevitably restricts

<sup>57</sup> CHESTERMAN, YOU, *The People* (above fn. 39), 153.

<sup>58</sup> Caroline HUGHES / Vanessa PUPAVAC, *Framing Post-Conflict Societies: International Pathologisation of Cambodia and the Post-Yugoslav States*, *Third World Quarterly* 26 (2005), n. 6, 873-889, 874.

<sup>59</sup> *Ibid.*, 883.

<sup>60</sup> *Ibid.*, 881.

their capacities to discuss and settle issues of personal relevance. In combination with the external control mechanisms, this therapeutic approach has had a destructive impact on both the public and the political sphere, resulting in

“a ‘hypertrophied public realm’ with the political arena reduced to a narrow one of international officialdom [...] and an ‘atrophied public realm’ in the sense of loss of citizenship with collective political society reduced to reliance on personal and parochial networks”.<sup>61</sup>

Undoubtedly, a political sphere dominated by international officials and a public realm that disregards local people do not provide the necessary conditions for a flourishing democracy.

The “neo-colonial” attitude of many international officials combined with the therapeutic paradigm that construes the members of post-conflict societies merely as victims who need to recover psychologically and who are absolutely unable to govern themselves proved fatal for the future prospects of democracy and liberal pluralism in Bosnia and Kosovo. Particularly deserving of criticism are the international community’s failure to adapt its policies to address the reality on the ground, as well as its failure to involve local stakeholders in the drafting of policies.

“From the beginning of my involvement in the Yugoslav mediation effort to present-day emergency seminars on Kosovo, I have been amazed by the can-do philosophy and the nonchalance with which certain policy planners invent their own solution models without asking whether the antagonists will even be willing or able to implement them”,

writes Ahrens,<sup>62</sup> describing the experimental attitude of many international actors. In reality, this is closely related to the case-specific provisions adopted in Bosnia and Kosovo, the overall lack of valid pan-European standards, and the lack of consistency on the part of the international organizations.

### **Introducing Liberal Pluralism before Democracy and the Rule of Law**

The international missions in Bosnia and Kosovo both have largely failed to secure a safe environment for all ethno-national groups and to establish the rule of law. For many years, the informal economy, high levels of corruption, and political unpredictability have hindered democratic consolidation. Despite the six billion dollars that were committed to Bosnia’s reconstruction after Dayton, no other country of this size has more levels of government, more politicians, or

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<sup>61</sup> CHANDLER, *From Kosovo to Kabul* (above fn. 30), 207.

<sup>62</sup> AHRENS, *Diplomacy on the Edge* (above fn. 26), 536.

more potential for corruption, extortion, or impasse.<sup>63</sup> Likewise, after 1999, the international military presence was in many cases unable to protect the Kosovar Serbs from attacks, and later it failed to arrest and try the perpetrators. Moreover, many regions in Kosovo, especially in its northern section, were never placed under the control of UNMIK, despite its heavy military and police resources, thus becoming small “pockets of lawlessness”.<sup>64</sup> Drawing conclusions from their own experience in Kosovo, King and Mason offer the following piece of advice:

“Install democracy comprehensively but only after security and the rule of law are established. The first order of business for any peace-building mission must be to establish order.”<sup>65</sup>

What happened in Bosnia and Kosovo, on the other hand, is the opposite; elections were organized before there was law and order. Certainly, the sequencing was wrong. The international missions in Bosnia and Kosovo should have focused their efforts on establishing the rule of law and provided better security in the aftermath of the conflict before proceeding with elections and the transfer of power to local institutions.

In other words, the international community failed to establish liberal constitutionalism – which implies a political arrangement based upon a body of fundamental laws that define basic rights, establish governmental authority, and identify the limits of its competences<sup>66</sup> – and a democratic political culture. In such circumstances, the emergence of liberal multiculturalism, as propagated by various international actors, is extremely difficult, if not impossible. Kymlicka notes that the existence of a well-rooted tradition of liberal constitutionalism “was crucial” to the type of multicultural liberalism that emerged in democratic countries such as the U.S., Canada and some European countries.<sup>67</sup> Multicultural liberalism can hardly emerge contemporaneously with liberal constitutionalism, especially in places where a considerable degree of ethno-national mistrust exists and where democracy lacks deep roots.

Therefore, given the lack of functioning institutions, a respect for basic human and civic rights, and the rule of law in Bosnia and Kosovo, the enforcement of legal provisions promoting liberal multiculturalism among these polities followed the wrong chronological order. Although Kymlicka argues that the rise of multiculturalism is only a wider dimension of a broad-ranging struggle to liberalize society and to implement the ideals of the human rights revolution and civil rights liberalism, what we witnessed in the case of Bosnia and Kosovo

<sup>63</sup> IGNATIEFF, *Empire Lite* (above fn. 38), 36.

<sup>64</sup> Roland PARIS, *At War's End. Building Peace after Civil Conflict*. New York 2004, 1f.

<sup>65</sup> KING / MASON, *Peace at any Price* (above fn. 45), 259.

<sup>66</sup> Nenad DIMITRIJEVIĆ, *Ethno-Nationalized States of Eastern Europe: Is There a Constitutional Alternative?*, *Studies in East European Thought* 54 (2002), n. 4, 245-269, 255.

<sup>67</sup> KYMLICKA, *Multicultural Odysseys* (above fn. 11), 254.

is a multiculturalism that is largely declamatory and is frequently used as an all-encompassing term. In an environment lacking in impartial and efficient institutions that guarantee basic human and civil rights for all individuals, concepts of multiculturalism and multiethnicity are nothing but buzz words; as one civil society agent in Kosovo commented,

“there is no idea how to measure the achievement of ‘multi-ethnicity’, except the belief that simply by repeating a meaningless phrase it will suddenly become meaningful”.<sup>68</sup>

The problems concerning the definition of a multicultural and multiethnic society became apparent especially in post-1999 Kosovo, where the role of the UNMIK remained largely undefined due to the uncertainties about the future status of the territory.

### **The Primacy of Group-differentiated Rights**

Multicultural liberalism is defined by group rights supplementing individual rights. However, international actors in Bosnia and Kosovo have overemphasized group-differentiated collective and cultural rights, thus “culturizing” group conflicts (to use Brian Barry’s term)<sup>69</sup> and perpetuating ethnicity as the main identity signifier. The Dayton Peace Accords on Bosnia, the UN Security Council Resolution 1244 and the Constitutional Framework for Provisional Self-Government in Kosovo exemplify such tendencies. These formal agreements, and particularly the Dayton Accords, have been widely criticized for failing to build an acceptable and working relationship between group and citizen rights. By prioritizing group-differentiating rights, the international actors have encouraged the use of ethnicity both in the constitutional settings and in the political relations in Bosnia and Kosovo.

The Constitution of Bosnia, which is included in the Dayton Agreement as Annex 4,<sup>70</sup> distinguishes between the “constituent people” (meaning Bosniacs, Serbs and Croats), “others” and “citizens”, thus according special group rights for the former groups but failing to “harmonize them with the principle of non-discrimination among equal citizens”.<sup>71</sup> Moreover, the voting system prevents

<sup>68</sup> Albin KURTI, Is It True That an Independent Kosova Will Inevitably Be a Mono-ethnic State, Unless Serb Communities and Their Territories Become Autonomous?, in: Anna Di LELLIO (ed.), *The Case for Kosova: Passage to Independence*. London 2006, 145-154, 146f.

<sup>69</sup> Brian BARRY, *The Limits of Cultural Politics*, *Review of International Studies* 24 (1998), 307-319.

<sup>70</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina. Initialed in Dayton, Ohio on 21 November 1995 and signed in Paris on 14 December 1995.

<sup>71</sup> Tibor VÁRADY, On the Chances of Ethnocultural Justice in East Central Europe, in: Will KYMLICKA / Magda OPALSKI (eds.), *Can Liberal Pluralism Be Exported? Western Political Theory and Eastern Relations in Eastern Europe*. Oxford 2001, 135-149, 146.

individuals from voting for members of other ethnic groups. This is the case for both the House of Peoples and the Presidency, which are elected directly by respective ethnic constituency.<sup>72</sup> In the words of Zoran Pajić, the Dayton Agreement, with all its fundamental contradictions – declaring a unified state while recognizing two separate and antagonistic entities as constituent parts of the state; proclaiming democracy while entrenching apartheid structures and ethnically based parties; re-affirming individual rights while legitimizing ethnic majoritarianism – raises serious concerns about the political vision that will prevail in Bosnia.<sup>73</sup> In this way, the Bosnian Constitution “has simply juxtaposed principles and declarations, reaching some sort of rhetorical balance, but stopping short of real accommodation”.<sup>74</sup> This complete “culturalization” of group relations and the inability to realize any kind of “ethno-cultural justice”<sup>75</sup> in Bosnia without violating the individual rights of equal citizens endanger the prospects of successful liberal pluralism in Bosnia. Likewise, in a situation where ethno-territorial divisions have been enshrined in the country’s legislation, citizenship – as a link between the individual and the state – is largely understood through the prism of ethnicity.<sup>76</sup>

Group-differentiated rights have taken precedence also in Kosovo from the beginning of the UN administration onwards. By making reference to the Interim Agreement for Peace and Self-Government in Kosovo (also known as the Rambouillet Agreement), UNSC Resolution 1244, which is the legal basis for the UN mission in Kosovo, categorizes people into members of “national communities” (Article I.2 of the Agreement). Thus,

“from the very beginning UNMIK tried to accomplish multi-ethnicity in an ethnically based manner, by naming groups – Albanians, Serbs, Romas, Turks, Egyptians, Bosniacs and Ashkalis as in a *terra nullius*”.<sup>77</sup>

Individuals were defined, first and foremost, as members of their respective ethnic communities. By doing so, the UNMIK “at the very start pre-empts

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<sup>72</sup> Jakob Finci and Dervo Sejdić, Bosnian citizens of Jewish and Roma origin, respectively, were ineligible to run for elections for these institutions and filed a suit against Bosnia at the European Court of Human Rights. In December 2009, the European Court of Human Rights judged that the ineligibility of Finci and Sejdić lacked an objective and reasonable justification and violated article 14, article 3, protocol 1, and article 1, protocol 12, of the European Convention on Human Rights. For more see Eldar SARAJLIĆ, *A Citizenship Beyond the Nation-State: Dilemmas of the “Europeanisation” of Bosnia and Herzegovina*, CITSEE Working Paper 10. Edinburgh 2009, 23.

<sup>73</sup> Zoran PAJIĆ, *Expert Opinion. Political and Civil Rights of “Others and Citizens” in Bosnia and Herzegovina*. Sarajevo 2007, 2.

<sup>74</sup> VÁRADY, *On the Chances of Ethnocultural Justice* (above fn. 65), 146.

<sup>75</sup> *Ibid.*, 139.

<sup>76</sup> SARAJLIĆ, *A Citizenship Beyond the Nation-State* (above fn. 67), 16f.

<sup>77</sup> KURTI, *Is It True* (above fn. 62), 137.

ethnicity".<sup>78</sup> Ethnicity and group rights were the paramount values in UNMIK's ethnicized discourse in postwar Kosovo. This process, which was initiated by the UN administration in Kosovo by applying the territorial principle in providing group-differentiated rights, facilitated ethnic segregation through the creation of new municipalities based on the principle of ethnic majoritarianism. Carl T. Dahlman and Trent Williams have criticized this approach of territorial exclusivity and enclavization through the creation of new ethnically pure municipalities, arguing that the process led to ethnic segregation and merely advanced the illiberal agenda of ethnic nationalism.<sup>79</sup>

The approach adopted by the international actors in Bosnia and Kosovo reflects a contradiction, present even in normative debates, between universalism and particularism, or, as Alain Finkelkraut called it, "the paradox of the multi-cultural vision".<sup>80</sup> On the one hand, the postwar legislation in these two countries defends the universalist values of the Enlightenment by recognizing no exclusions, loyalties or claims based on ancestral rights; on the other hand it promotes group rights (of the "national communities") and defends their exclusivity and inherited characteristics. The international actors in Bosnia and Kosovo adopted patchwork institutional tools and essentially perpetuated existing cleavages rather than creating a dynamic system capable of establishing a balance between individual and group rights.<sup>81</sup> Certainly, the international community's strong emphasis on group rights did not produce the expected results.

## Conclusion

International peace operations have grown in number and their aims and mandates have expanded over time. Notwithstanding these changes, the establishment of sustainable security conditions for the civilian population remains one of the most important aims of any peace operation.<sup>82</sup> The failure of international actors to establish these conditions as well as multicultural democracy in Bosnia and Kosovo is palpable. The strategies and order of steps taken proved to be wrong. As discussed in this paper, the rush by the international missions

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<sup>78</sup> Besnik PULA, Who Constitutes the State of Kosovo? Citizenship and the Community in Ahtisaarian Kosovo, in: Forum 2015 (ed.), European Identity of Kosova, International Symposium, 26 and 27 June 2007 in Prishtina. Prishtina 2008, 79-82, 80.

<sup>79</sup> Carl T. DAHLMAN / Trent WILLIAMS, Ethnic Enclavisation and State Formation in Kosovo, *Geopolitics* 15 (2010), no. 2, 406-430.

<sup>80</sup> As quoted in Roger SCRUTON, *Philosopher on Dover Beach: Essays*. South Bend/IN. 1998, 325.

<sup>81</sup> Florian BIEBER, The Challenge of Democracy in Divided Societies: Lessons from Bosnia – Challenges for Kosovo, in: Džemal SOKOLOVIĆ / Florian BIEBER (eds.), *Reconstructing Multiethnic Societies: The Case of Bosnia-Herzegovina*. Aldershot 2001, 109-122, 118.

<sup>82</sup> CHESTERMAN, *You, The People* (above fn. 39), 112.

to adopt and (arbitrarily) implement principles of multiculturalism and liberal pluralism in these countries before stabilizing them and before establishing the rule of law and democratic institutions that would have safeguarded basic individual civic rights was a mistake. The immediate introduction of contemporary norms of liberal pluralism to a region that had never known democratic rule was not the wisest approach to address ethnic diversity and conflicts in Bosnia and Kosovo. Equally important in this context is the continued control over the decision-making process by the international institutions. Many rules and regulations were imposed without proper input from the local populations. The attempts to reshape ethnic identities in the Balkans by way of institutional engineering, or even through "institutional experiments"<sup>83</sup> did not produce the expected results. Instead, international authorities should have endeavored to institutionalize the general will and to develop a social contract among the local population.

With regard to the process of creating rules and institutions in multiethnic societies, Monica Robotin distinguishes two major phases: In the first phase, proper legislation protecting individual rights and collective rights needs to be adopted; in the second phase, the adopted policies should be implemented.<sup>84</sup> Generally speaking, the international missions in Bosnia and Kosovo were not completely successful in either of the phases. Thus, in many cases multiculturalism remains fictitious and merely the expression of wishful thinking. The institutionalization of democracy in multicultural and ethnically divided countries is a highly complex task and, if it is not carried out carefully, runs the risk of perpetuating ethnic cleavages.

Though there are many differences in the way that international actors handled the missions in Bosnia and Kosovo, the similarities prevail. Unfortunately, many of the mistakes that made in the case of Bosnia were repeated in Kosovo.<sup>85</sup> Notably, international officials in Bosnia and Kosovo failed to accomplish the following tasks: involving local politicians and the people in negotiations and decision-making, establishing the rule of law, tackling social and economic problems, and wielding "soft power" (civic education, free media). In both countries, ethnic cleavages and a variety of other problems persist. Moreover, the international administrations in Bosnia and Kosovo followed the problematic paradigm of "therapeutic governance". The pathologization of the war-affected societies in both countries ensured political, social and psychologi-

<sup>83</sup> PULA, Who Constitutes the State of Kosovo? (above fn. 72), 80.

<sup>84</sup> ROBOTIN, A Comparative Approach to Minority Participation in Government (above fn. 21), 168.

<sup>85</sup> Comparing the Dayton and Rambouillet Agreements, Chandler concludes that "Rambouillet was a repetition of the Dayton framework, but updated to include the additional powers awarded to the international institutions since November 1995 [...]" CHANDLER, Bosnia (above fn. 43), 204f.



cal consequences that impaired their recovery and democratic consolidation. Certainly, the international community's failure to guarantee security and the rule of law in the immediate aftermath of the conflict and to then proceed with a well-balanced and consistent transfer of competencies to local actors increased frustration both among local populations and the international missions, thus ultimately increasing external intrusiveness and local dependency.

To summarize, the central lessons to be drawn from the experiment with liberal pluralism and multiculturalism in the former Yugoslavia are that these ambitions can flourish only after the democratic functionality of the society and the rule of law have been established, and that substantial local input is necessary to assure sustainable, functioning institutions. Undoubtedly, the proponents of liberal internationalism (i. e., promoters of turbo-capitalism) mistakenly expected these countries to become democracies and free market economies, "effectively completing a transformation that took several centuries in the oldest European states",<sup>86</sup> in the course of a few years. Ignatieff has rightly pointed out that "the failure to grasp that democracy works only when it goes hand in hand with the rule of law has been the costliest mistake in the Balkans".<sup>87</sup> Therefore, the prevailing assumption that a democratic and multicultural institutional framework automatically generates liberal democratic substance, irrespective of the establishment of the rule of law, should be seriously reconsidered by international actors in future interventions.

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<sup>86</sup> Sumantra Bose, *Bosnia after Dayton: Nationalist Partition and International Intervention*. London 2002, 89.

<sup>87</sup> IGNATIEFF, *Empire Lite* (above fn. 38), 101f.